Supreme Court of the United States

OCTOBER TERM—1940.

No. .....

THE AMERICAN TOBACCO COMPANY and R. J. REYNOLDS TOBACCO COMPANY,
(Libellants-Appellees Below),

against

Steamship *Katingo Hadjipatera*, her engines, boilers, etc., and J. C., N. C. and A. C. HADJIPATERAS,
Respondents.

K. DIAMANTOPOULOS, Minister to the United States for the Kingdom of Greece,
(Petitioner-Appellant Below).

BRIEF FOR PETITIONER.

I. Opinions of the Courts Below.

The opinion of the District Court has not been officially reported. A copy of the opinion, however, is printed in the records at pages 106-112.

The Circuit Court of Appeals did not write an opinion. On the 23rd day of April 1941 it affirmed the decision of the District Court on the opinion of the District Court (127).

II. Jurisdiction of This Court.

Jurisdiction of this Court is under Section 240 of the Judicial Code as amended on February 13th, 1925, in U. S. Code, Title 28, 347, and under Article 3, Section 2, Clause 1, of the Constitution of the United States.

III. The Facts.

The facts are stated to a large extent in the foregoing petition and will not be repeated here. We will supplement the petition, however, by stating some of the facts somewhat more at length.

The Master of the Steamship *Katingo Hadjipatera* was notified by letter dated February 25th, 1941, while the vessel was at Newport News, Virginia, that it had been requisitioned by the Greek Government and he was specifically instructed in the notice of requisition to unload the cargo which he then had aboard and after that to sail to New York to take on a new shipment. The letter requisitioning the S.S. *Katingo Hadjipatera* was as follows:

> "* * * As soon as you have unloaded your present cargo, sail to the port of New York to take on this new shipment" (Exhibit B-28).

It is particularly to be observed that the letter of requisition immediately assumed control of the vessel. It specifically directed the master of the Steamship *Katingo Hadjipatera* as to what he was to do with the cargo he then had on board. It directed him to unload the cargo which was then aboard his vessel. It specifically directed the master as to what he was to do thereafter. It directed him to proceed to New York with the vessel there to take on a

cargo belonging to the Greek Government for transportation to Piraeus.

The master of the Steamship *Katingo Hadjipatera* acknowledged this requisition by telephone on February 26th, 1941, the day after it was sent to him by Captain Courbellis and the master then stated that he was holding his vessel subject to the requisition.

Captain Courbellis, testifying as to the conversation he had with the captain of the Steamship *Katingo Hadjipatera* on February 26th, 1941 said:

> "The Witness: He told me that the steamer, after he received the letter, is requisitioned and he told me he is pleased to go to Greece and when the steamer will be discharged he will come for loading because the steamer after Newport News had another two ports more for discharging. It was New York and Camden. I think Camden is the name exactly" (74).

The Greek Government from the time that it requisitioned the vessel had, and actually did exercise the right to direct the vessel's movements and its directions were obeyed. It directed the vessel to discharge its cargo and it directed the vessel thereafter to proceed to New York to take on a cargo belonging to the Greek Government for transportation to Piraeus. The vessel did follow the Greek Government's orders and was from that time on in the public service of the Greek Government and obeying the Greek Government's orders.

Captain Courbellis testified that, from that time on, he had the right to direct the vessel's movements. He testified:

> "Q. Now, Captain Courbellis, who, after the letter of February 25th, could direct the movements of the vessel?

Mr. Longley: I object to that.
A. I could" (86).

Captain Courbellis further testified:

> "Q. What conversation did you have with the captain on that point? A. Sir, the steamer arrived at New York loaded. The government wants the steamer to load it. Then she did not order the steamer loaded. She ordered the steamer to discharge as quickly as possible in order to load the steamer again. I told the captain to discharge, after the steamer will be discharged—that is written in my letter—to proceed to New York immediately and ask the instructions from our agent because we wanted the steamer empty; light" (87).

Captain Skinitis who was Master of the Steamship *Katingo Hadjipatera* testified that after having had the conversation with Captain Courbellis he took no orders from anyone else. He testified:

> "Q. Other than what you have told us, Captain, with respect to the conversation you had with Captain Courbellis, did you take any orders from anyone else other than Captain Courbellis?
> Captain Courbellis: Put the question again.
> Q. (Read). A. No" (94).

The Greek Government urgently needed the vessel for the purpose of carrying on the war in which it is engaged. The vessel with cargo aboard was useless to it. The Greek Government wished to have the cargo removed and accordingly directed that the cargo which was then aboard be delivered and that the vessel proceed to New York as soon as possible in order that the remaining cargo which was destined for New York and Camden might be removed and

the vessel put in condition to receive cargo which the Greek Government wished to have it carry. There was no necessity for the Greek Government to order the cargo to be dumped at Newport News or Norfolk, as that would no more have helped the situation than actually to deliver it.

There was no necessity for the Greek Government to order that the New York and Camden cargo be left at Newport News or Norfolk as the Greek Government wished to have the vessel come to New York in any event to pick up its war cargo and the cargo could be unloaded in New York as easily as at Newport News or Norfolk. Actually there was no opportunity for the vessel to dispose of the Camden cargo as she was arrested by the Marshal within a few minutes after her arrival at New York and has continued to this day and now is in the Marshal's custody.

There is no question but that the master of the Steamship *Katingo Hadjipatera* received the notice of requisition on February 26th, 1941.

There is no question but that the Master was ordered by the Greek Government under the requisition to discharge the vessel's cargo.

There is no question but that the Master was ordered by the Greek Government to proceed to New York.

There is no question but that the Master recognized the requisition and acted under it, and acknowledged that he would abide by it. As the District Court said in its opinion:

> "On February 26, at about 3:15 Captain Courbellis was telephoned by Captain Skinitis and in that telephone conversation Captain Skinitis acknowledged the receipt of that notice of the requisitioning of his vessel and stated in effect that he would abide by it" (108).

There is no question but that the libel in this case was not filed until some ten days after February 26th, that is on March 7th, after the vessel had made the voyage from Newport News and Norfolk to New York (108).

POINT I.

A vessel of a friendly sovereign government in its possession and service is immune from suit in Courts of Admiralty of the United States.

The rule of law set forth above is recognized and has been frequently asserted. *Berizzi Bros. Co.* v. *The Pesaro*, 271 U. S. 562. *Compania Espanola, Etc.* v. *The Navemar*, 303 U. S. 68. In *The Navemar, supra*, this Court said:

> "The decree of attachment without more, did not operate to change the possession which, before the decree, was admittedly in petitioner. To accomplish that result, since the decree was *in invitum*, actual possession by some act of physical dominion or control in behalf of the Spanish Government, was needful, The Davis (United States *v.* Douglas) 10 Wall, 15, 21, 19 L. ed. 875, 877; Long *v.* The Tampico (C.C.) 16 F. 491, 493, 494; The Attualita (C.C.A. 4th) 238 F. 909, *supra;* The Carlo Poma (C.C.A. 2d) 259 F. 369, 370, reversed on other grounds in 255 U. S. 219, 65 L. ed. 594, 41 S. Ct. 309, or at least some recognition on the part of the ship's officers that they were controlling the vessel and crew in behalf of their government. Both were lacking as was support for any contention that the vessel was in fact employed in public service. See Long *v.* The Tampico, *supra* (C.C.), 16 F. 493, 494; cf. Berizzi Bros. Co. *v.* The Pesaro, 271 U. S. 562, 70 L. ed. 1088, 46 S. Ct. 611, *supra.*"

Insofar as the Steamship *Katingo Hadjipatera* is concerned the facts are quite different from the facts in *The Navemar, supra.*

In the present case the Greek Government exercised dominion over the Steamship *Katingo Hadjipatera* by directing it to proceed to New York, as soon as it had unloaded its cargo (Exhibit B-28) and the Master of the vessel recognized that he was controlling the vessel on behalf of the Greek Government. As the District Court found in its opinion:

> "• • • in that telephone conversation, Captain Skinitis acknowledged the receipt of that notice of the requisitioning of his vessel and stated, in effect, that he would abide by it" (108).

From the moment the vessel was requisitioned it was in the public service of the Greek Government, for it was under directions to discharge its cargo with the utmost speed so that a new cargo for the Greek Government might be put aboard. As Captain Courbellis said:

> "I told the Captain to discharge, after the steamer will be discharged—that is written in my letter—to proceed to New York immediately and ask the instructions from our agent because we wanted the steamer empty; light" (87).

The failure of the lower court to recognize the fact that the vessel was in the possession and service of a friendly foreign sovereign and, therefore, immune from suit in the admiralty courts of the United States, was a violation of the principles of law recognized by this court in *The Navemar, supra, The Pesaro, supra,* and other similar cases.

The libellant, in the Circuit Court of Appeals, in referring to *The Navemar, supra,* made point of the fact that no Greek Consular officials had done any act purporting to take possession of the vessel and that none of the Consular officials had informed the Master that they wished to take possession or had any intention of doing so.

We submit that in these things, *The Navemar* does not establish an absolute rule as to what must be done or what must not be done to take possession of a vessel and we further submit that the Greek Government officials whether consular or not did perform acts taking possession of the vessel and did take possession and assume control of it.

The libellant in the Court below made point of the fact that the vessel had proceeded under the command of her master from Norfolk to New York with cargo belonging to private persons and that she was manned by her officers and crew presumably in the employ of private owners.

The vessel did proceed to New York under the command of her master and manned by her officers and crew because she was specifically directed by the Greek Government to proceed to New York and because the master himself was directed by the Greek Government to take her there and informed Captain Courbellis that he would do so.

The libellant made point of the fact that the master allegedly acted under instructions from ship's agents and ship's insurers in discharging the cargo and that demand had been made in the name of her former owners for general average security.

The Greek Government was not in the steamship business. It naturally would not be equipped to perform the various acts that ship's agents could perform and it would naturally leave the details of loading, unloading, general average, etc., to persons other than itself. Even if these

things were performed by persons other than the Greek Government they were not controlling. On the questions of whether the Greek Government had taken possession of the vessel, the controlling facts are that the vessel had already been requisitioned by the Greek Government and that the master of the vessel had recognized the requisition and proceeded to act for the Greek Government under it.

The Greek Government was prepared to pay the bills incurred on behalf of the vessel and had set aside a fund of $25,000 for that purpose. Captain Courbellis testified that he had received from the Greek Government the sum of $25,000 for the expenses of the Steamship *Katingo Hadjipatera*. He stated:

> "Q. Have you agreed on behalf of the Greek Government, to bear any of the expense for these matters to which I have referred? A. I have not any order to pay these bills. The only thing I know till now is that the Government sent me $25,000 at the Guaranty Trust Company for expenses of 'Katingo Hadjipatera'. The Government did not tell me yet, instructions, for what to pay, to pay these bills or bills which will provide after. I have $25,000 special for 'Katingo Hadjipatera' at the Guaranty Trust Company" (83).

The important thing to consider is not the details as to who actually discharged the cargo, who employed the ship's chandlers, who arranged for wharfage, etc., but rather the fact that the master, before the vessel was libeled, received orders requisitioning the vessel, acknowledged that he would serve under those orders and actually did act as directed by the orders and was in possession of the vessel for the Greek Government.

POINT II.

The prayer of the petitioner should be granted.

To take the view that what was done by the Greek Government and by the ship's master did not amount to requisition and taking possession of the vessel and having it enter the public service of the Greek Government is to take a view that is narrow and entirely unwarranted. We submit that complete dominion was exercised over the vessel by the Greek Government and that her captain took her over for the Greek Government and that she was in the Greek Government's possession and actually entered into the Greek Government's service from the moment of the requisition.

We submit that it would be a wrong to a friendly foreign sovereign government if the vessel were permitted to be sued. We submit that it is a wrong which is against the interests and policies of this Government and its foreign relations.

It is respectfully submitted that a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit, directing it to send to this court in full, the transcript of the records in the case, should be granted, and that the decision of the said Circuit Court of Appeals, entered on the 23rd day of April 1941 and the order entered on the 9th day of May, 1941, be reversed.

CARVER W. WOLFE,
Proctor for Petitioner.

MAY 23 1941
CHARLES ELMORE CROPLEY
CLERK

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Petitioner,

—against—

THE AMERICAN TOBACCO COMPANY and R. J. REYNOLDS TOBACCO COMPANY, *et al.*,

Respondents.

MEMORANDUM IN OPPOSITION TO THE MOTION OF K. DIAMANTOPOULOS FOR IMMEDIATE DETERMINATION OF HIS APPEAL.

T. CATESBY JONES,
HENRY N. LONGLEY,
Proctors for Respondents, The American Tobacco Co., and R. J. Reynolds Tobacco Co.

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Petitioner, K. Diamantopoulos, Minister to the United States for the Kingdom of Greece, has given notice that the Court will be asked to determine, before adjournment of the present term, whether a writ of certiorari is to issue in this case. Naturally, respondents are satisfied to have the Court pass upon the petition for a writ at any time that it may desire. In accordance with the request of counsel for petitioner, we have not delayed the filing of our brief in opposition to the granting of the writ: it is now on file.

If this Court determines to pass upon the petition for a writ forthwith, and if it should decide that the questions presented should be considered by the Court, no doubt it is within the Court's power to decide the questions presented, as petitioner requests, without oral argument, without additional briefs and without following the pro-

cedure which normally accompanies the granting of such a petition. However, the brief which we have filed is merely in opposition to the granting of the writ.

Our own view is that the questions presented are of considerable importance and should not be decided finally without being fully briefed and argued.

The affidavit of Carver W. Wolfe, Esq., filed in support of the motion, sets out considerable argument on the merits of the controversy between the parties. We do not deem it necessary or appropriate in this memorandum to submit any discussion on the merits of the cause in addition to that set out in our brief in opposition to the granting of the writ.

Respectfully submitted,

T. CATESBY JONES,
HENRY N. LONGLEY,
Proctors for Respondents, The American Tobacco Co., and R. J. Reynolds Tobacco Co.